IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5179 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RATILAL H. NAYAK

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 5179 of 1993
MR TUSHAR P HEMANI for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 19/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Leave to make correction in the prayer clause.

In this petition under Article 226 of the

Constitution, the petitioner has prayed for a direction to the respondents, particularly the appropriate authority (under Chapter XX-C of the Income-tax Act, 1961), Ahmedabad to pay the petitioner interest at the rate of 18% p.a. on the apparent consideration amount for the period from 31.7.1992 till 3.12.1992 when the petitioner was paid apparent consideration of Rs.30,56,218/- after certain deductions. The claim is made under sub-section (4) of Section 269 UG of the Income-tax Act, 1961 ["the Act" for short].

2. The petitioner was the owner of the property situated at Ahmedabad for which the petitioner executed an agreement to sell on 12.5.1992 for a sum of Rs.47,34,400/-. The petitioner filed the form under Section 269 UC on 25.5.1992 and the appropriate authority at Ahmedabad, respondent No.2 herein, passed the order under Section 269 UD(1) for acquiring the property in question after deducting Rs.71,491/- by way of discount for accelerated payment. On 5.8.1992, the appropriate authority demanded possession and on 14.8.1992 the petitioner handed over vacant and peaceful possession of the property in question to the appropriate authority. On 19.8.1992, Ramdulara R Chauhan, claiming to be a lawful tenant of the property in question, filed a suit in the Small Causes Court for a declaration that he was lawful tenant in a part of the property in question. On 27.8.1992, the amount of apparent consideration after deduction of the discounting amount came to be deposited with the appropriate authority's account. On the same day, State Bank of India filed a summary suit for invoking the guarantee given by the petitioner in connection with another transaction for a sum of Rs.5.75 lakhs. On 28.8.1992, the the petitioner lodged his objections against the order dated 31.7.1992. On 2.9.1992, the appropriate authority deposited the consideration in a separate account under Section 269 UG of the Act. On 3.9.1992, the petitioner objected to the amount being deposited in the separate account instead of the same being paid to the petitioner. Thereafter, the petitioner's forms under the Urban Land Ceiling Act also came to be cleared. On 6.10.1992, the trial Court passed consent order under which an arrangement was arrived at for payment of the amount due and payable by the petitioner to State Bank of India to be paid directly by the appropriate authority to the Bank out of the apparent consideration payable by the appropriate authority to the petitioner. On 22.10.1992, Ramdulara R Chauhan withdrew the suit filed by him regarding tenancy rights. Between 23.10.1992 and 30.11.1992, the petitioner approached the appropriate authority from time to time for paying over

the apparent consideration to the petitioner. The appropriate authority made the following payments :-

Amount	Payee	
Rs. 9,46,880/-	Ami Officers' Association	(return of earnest money deposit to the intending purchaser)
Rs. 5,71,811/-	State Bank of India	(against the petitioner's dues to the bank as a guarantor)
Rs. 30,56,218/-	The petitioner	(the balance of the apparent consideration after discounting)
Rs. 45,74,909/-		

On 4.12.1992, the petitioner filed an application before the appropriate authority requesting for interest for the delay in payment of the apparent consideration. Thereafter on 13.4.1993 the petitioner filed the present petition -

(A) challenging the order dated 31.7.1992 under Section 269 UD(1) of the Act and in the alternative

(B) praying for a declaration that the said order has stood abrogated and the property in question is revested in the petitioner and further in the alternative the petitioner made the following prayers:-

"(C) to command the respondents :

(i) to pay to the petitioner a sum of Rs.71,491/- being the amount of discount applied to the apparent consideration, and

(ii) to pay to the petitioner interest at the rate of 18% per annum on Rs.46,46,400 from 31.7.1992 till 3.12.1992."

The only interim relief prayed for was to restrain the respondents from selling, transferring, disposing of the property in question during pendency of the petition.

On 24.6.1993, this Court admitted the present petition in view of the statement made by the learned counsel for the petitioner that other petitions involving the issue as regards discounting were admitted by this Court.

3. When the petition has reached hearing today, Mr Tushar P Hemani, learned counsel for the petitioner states that the petitioner does not press reliefs (A) and (B) and also fairly states that the question of discounting has been decided against the assessees by the Hon'ble Supreme Court in Rameshbhai J Patel vs. Union of India, 247 ITR 182. Hence, the learned counsel does not press for prayer (C)(i). The learned counsel has, however, seriously pressed the prayer for a direction to the respondents to pay the petitioner interest at the rate of 18% on Rs.46,46,400/- from 31.7.1992 till 3.12.1992 and further interest on such interest.

The learned counsel has submitted that in view of the provisions of Sub-section (4) of Section 269 UG, the appropriate authority was required to invest the amount of consideration deposited with it and to pay the interest to the petitioner to give the same benefits which the petitioner would have had from the immovable property in question.

4. On the other hand, Mr Manish R Bhatt, learned standing counsel for the department has opposed the petition and submitted that the petitioner is not entitled to any relief in view of the following submissions :-

(i) After the amount of apparent consideration was deposited by the Central Government with the appropriate authority, the amount remained in a separate account. Since the appropriate authority had not invested the amount, the question of any interest having been earned on the amount deposited did not arise and, therefore, the provisions of Sub-section (4) of Section 269 UG could not be invoked. In any case, the petitioner himself had not made any application to the appropriate authority under said provision for investing the amount of consideration and, therefore also, the petitioner

is not entitled to any relief.

(ii) The petitioner had accepted the amount of Rs.30,56,218/- on 3.12.1992 and had passed the receipt stating "this is in full and final settlement of the payment of the apparent consideration of the said property as per the order referred to above." The petitioner is, therefore, estopped from claiming any further amount.

(iii) The petitioner was responsible for the two litigations which resulted into the delay in payment.

5. Sub-section (4) of Section 269 UG of the Act reads as under :-

"269 UG Payment or deposit of consideration

(4) Where any amount of consideration has been deposited with the appropriate authority under this section, the appropriate authority may, either of its own motion or on an application made by or on behalf of any person interested or claiming to the interested in such amount, order the same to be invested in such Government or other securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such matter as will, in its opinion, give the parties interested therein the same benefits therefrom as they might have had from the immovable property in respect whereof such amount has been deposited or as near thereto as may be."

(emphasis supplied)

A bare perusal of the aforesaid provision clearly indicates that when the amount of consideration is deposited with the appropriate authority, it is not that the appropriate authority cannot invest the amount for earning interest without any application from the owner of the property or any person interested or claiming to be interested in such amount. The appropriate authority can suo motu also make such investment, as is expressly recognized in the above provision. In the facts of the present case, and more particularly in view of the two litigations which were commenced against the

petitioner-one by Ramdulara R Chauhan and the other by State Bank of India, there was all the more reason for the appropriate authority to make such investment at least in a monthly deposit scheme instead of simply depositing the amount in a separate account on 2.9.1992 when the appropriate authority had already obtained vacant and peaceful possession of the property in question on 14.8.1992. Merely because the petitioner had not made any application for such investment, the appropriate authority was not absolved from its duty to exercise its discretion under sub-section (4) of Section 269 UG to invest the amount of consideration to ensure that the amount did not lie idle and should start earning interest.

For the aforesaid reason, we are not inclined to accept the submission made by Mr Bhatt for the revenue that since the petitioner had not made application for investment and since the amount was not invested, the petitioner is not entitled to any relief under the aforesaid provision.

6. As regards the contention that the petitioner had passed receipt dated 3.12.1992 accepting the amount of apparent consideration in full and final settlement, it is required to be noted that the amount of apparent consideration to be received by the petitioner after deducting the amounts paid to Ami Officers' Association and to State Bank of India was a substantial amount of Rs.30,56,218/-. If the petitioner had not passed such receipt, the appropriate authority would not have paid the petitioner the said amount and the petitioner would have had to litigate for getting the same with interest. Looking to the amount of apparent consideration involved, the petitioner was justified in accepting the amount of apparent consideration for which the petitioner had to pass the receipt that the amount was received in full and final settlement of the payment of apparent consideration. However, the receipt did not indicate that the petitioner was giving up his claim for interest and, therefore also, we are of the view that the receipt dated 3.12.1992 would not come in the way of the petitioner pressing for his claim for interest.

7. The other ground given on behalf of the respondents that the petitioner was responsible for the delay on account of the two litigations does not exonerate the appropriate authority from not investing the amount in question. Since the appropriate authority had already obtained possession on 14.8.1992 and received the amount of consideration by 27.8.1992, nothing

prevented the appropriate authority from investing the amount from 1.9.1992 atleast on monthly basis.

8. In view of the above discussion, we are of the view that the petitioner is entitled to receive interest for the delayed payment of the amount of apparent consideration. The next question would be for which period and on how much amount the petitioner should be paid interest and at what rate.

9. In the facts and circumstances of the case, we are of the view that the petitioner should be paid interest for the period from 1.9.1992 till 30.11.1992 on the amount of Rs.30,56,218/-. Since the petitioner would retain the amount of interest with himself, we are not inclined to direct the respondents to pay the petitioner any interest on the other two amounts which the appropriate authority was required to pay, and did pay, to the two other parties - i.e. the refund of earnest money to the intending transferee-Ami Officers' Association and the amount paid by the appropriate authority to State Bank of India against the outstanding amount of the loan for which the petitioner had stood as a guarantor. The respondents shall, therefore, pay the petitioner interest on the amount of Rs.30,56,218/- for the period from 1.9.1992 to 30.11.1992.

10. As regards the rate of interest, considering the rates of interest on the deposits in savings account and monthly deposits at the relevant time in the year 1992, we are of the view that the interests of justice would be served if the respondents are directed to pay the petitioner interest at the rate of 6% p.a. on the aforesaid amount for the aforesaid period.

11. Coming last to the prayer to direct the respondents to pay interest on the aforesaid amount of interest for the period during pendency of the petition, we are not inclined to grant such relief as even in the memo of the present petition, apart from challenging the order of purchase dated 31.7.1992, the only interim relief prayed for by the petitioner was to restrain the respondents from transferring the property in question which interim relief was not granted by this Court. The petitioner had not prayed for any interim direction to direct the respondents to deposit the amount of interest and invest the same. Otherwise also, in the facts and circumstances of the case narrated earlier, we are not inclined to direct the respondents to pay the petitioner interest on interest.

12. The petition is partly allowed. The respondents are directed to pay the petitioner interest at the rate of 6% p.a. on the amount of Rs.30,56,218/- for the period from 1.9.1992 to 30.11.1992. This direction shall be complied with within one month from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

Rule is made absolute only to the aforesaid extent with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-